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87-952

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

WILLIAM R. VANDERWALL, Petitioner
v.
CONSTANCE HORNER, et al, Respondents

PETITION FOR A WRIT OF CERTORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN PROPER PERSON,
Petitioner

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November 6, 1987

QUESTIONS PRESENTED

Issue 1. As a matter of extreme public importance, does, as exposed herein, the Civil Service Department-Commission of the State of Louisiana, and possibly throughout the Federal, State, and local government(s), itself, operate its own uniquely discriminatory, unconstitutional patronage-spoils system--by means of "grandfathering," "Acting," "blanketing," or "title-changing" the unqualified/incompetent but favored person into a higher classification, pay, or position of decision-making authority for which he could not otherwise qualify/compete, thus circumventing what the U.S. Congress established, namely the Civil Service-Merit personnel system whose mission it is to qualify and protect,

with equity, all classified governmental employees.

Issue 2. Did the State and Federal Courts deny this whistleblower-petitioner's right, as per 42 USC 1981, "to present evidence" of very serious public wrongdoing (including conspiracies, collusion, fraud, concealment-falsification-duplication of existing positions/agency structure-functions, grand larceny, contempt of court, i.e. defiance of mandamus, injury of a public document, and numerous denials of due process and equal protection) and to be protected from such wrongdoing as derived from 42 USC 1983 and 1985, the Fifth and the Fourteenth Amendments, Congressional Act: 42 USC 4701 and 4721, and the Federal regulatory body, Office of

Personnel Management, all of which were instituted as protection for the individual/governmental employee?

Substantive Constitutional challenges as quoted verbatim from the petitioner's Brief, dated 10-17-86, to the U.S. Court of Appeals for the Fifth Circuit:

1. In this case, discriminatory personnel practice treated both parties the **same** rather than the traditional **"treated differently."**

2. Louisiana's State Civil Service System (should have read Commission) has no separation of powers, namely, legislative, executive, and judicial.

3. The Federal Office of Personnel Management's new policy of "self-certification" is contrary to Congressional intent "to strengthen"

State Merit Personnel systems and is therefore negligent to the protection of the employee's constitutional rights as per Merit Principle (5).

4. The Louisiana State Civil Service's condonation of the whiting out/falsifying of a public personnel document is not Constitutional Due Process.

5. Louisiana State Civil Service's current practice of temporary but potentially everlasting "Acting" appointments of unqualified persons is not Due Process of competition in Merit Systems.

6. In disputes between one State employee versus other State employees/ officials, the State should not provide legal assistance only to one side.

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LIST OF PARTIES

The parties to the proceedings below were the petitioner, William R. VAnderwall and the repoondents as follows;

CONSTANCE HORNER, not a wrongdoer, Director, Federal Office of Personnel Mgt.

JAMES R. SMITH, Chairman, Louisiana State Civil Service Commission

HERB SUMRALL, Director, Louisiana Depart. of State Civil Service and Secretary of the Louisiana State Civil Service Comm.

FRANK REITZEL, former Chief, Division of Classification and Pay, Louisiana State Department of Civil Service

ROBERT BOLAND, Chief Attorney, Louisiana State Civil Service Dept.-Commission

FRANK PEREZ, Attorney, La. Dept. of Health and Human Resources (DHHR)

JOSEPH KIMBRELL, Deputy Assisstant Secty. DHHR-Office of Health Services and Environmental (Louisiana's Public Health Agency) and principal wrongdoer

SYLVIA STERNE, friend and former co-worker of Mr.Kimbrell and thus the favored employee. However, she is considered to be a victim than a defendant.

ARTHUR FINN, Attorney, La.Atty. Gen. Off. now the defender of all the above except **HORNER AND STERNE**

MARK GALLINGHOUSE, U.S. Attorney, defender of **CONSTANCE HORNER**

WILLIAM J. GUSTE, La. Attorney General

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IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1987

WILLIAM VANDERWALL
Petitioner

VERSUS

MS. CONSTANCE HORNER,
ET AL
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE

FIFTH CIRCUIT

The Petitioner, William R. Vanderwall, respectfully prays that a writ of certiorari issue to review the judgments and opinions of the United States District Court for the Eastern District of Louisiana and the United States Court of Appeals for the Fifth Circuit entered in the above proceeding

on August 10, 1987,

OPINIONS BELOW

Appendix has three unpublished opinions.

JURISDICTION

1. Extreme public importance because this litigation is also an expose' of the startling fact that Louisiana's State Civil Service Department-Commission, itself, operates, with supportive criminal acts and without internal/external controls, its own patronage-spoils system which "it was intended to prohibit." It also

reflects this Petitioner's failure to present evidence of those facts in State and Federal Courts towards reform.

2. Final Federal Litigation (invoked under 42 USC 1983 and the Fifth and Fourteenth Amendments in the District Court of Eastern Louisiana which dismissed all charges of public wrongdoing and all defendants) by a three-judge panel from the Federal Court of Appeals, Fifth Circuit which, on August 10, 1987, "Denied" Petitioner's "Request for Panel Rehearing." The U.S. Supreme Court's jurisdiction is per Chapter 81, Section 1254 (1).

3.

The opinion of the Louisiana State Civil Service Commission, whose Civil Service Rule 5.7 is claimed to have the same force of law as a State Statute and to be uniquely discriminatory and thus repugnant to the U.S. Constitution. The United States Supreme Court's Jurisdiction is Chapter 81, Section 1257.

STATUTES/CONSTITUTIONS INVOLVED

The most important constitutional challenge is Louisiana's unique discriminatory practice: of being treated the same rather than differently, as per: State Civil Service Rule 13.11(d).4, which emphasizes "being treated differently" as the basis for appeals as per:

> (d) Where discrimination is alleged to be a basis for appeal...The types of facts which must be included are:
>
> 4. The names of other persons treated differently and the dates the different treatment occurred. (Underlines mine.)

State Civil Service Rule 5.7, Title Changes (as interpreted and misused by the Louisiana State Civil Service Department-Commission) which emphasized **"being treated the same,"** as quoted from its opinion, dated October 7, 1985 (see Item 35):

> Because the actions were title changes, under the provisions of Civil Service Rule 5.7, the incumbents were allowed to remain in their positions whether they qualified or not. For this reason, DCS was not called upon to determine whether either Mr. Vanderwall or Ms. Sterne met the **minimum qualifications** for the newly-created classes (i.e., Planning Analysts).

It is precisely the above-cited phrases:

"Whether they qualified or not" and "DCS was not called upon to determine whether Mr. Vanderwall or Ms. Sterne met the minimum qualifications for the (NOTE:) newly-created classes" that the Petitioner holds (explanation on pg. 21) contrary to:

1) U.S. Constitutional Amendments V and XIV.

2) Louisiana Constitution, Art. I, Section 2, Due Process:

3) The Louisiana Constitution, Art. X, Civil Service, Part I, Section 30, Oath of Office reads:

> I will support the Constitution and laws of the United States and the Constitution and laws of this State and that I will truthfully and impartially discharge and perform all duties incumbent upon me....

4) The Louisiana Constitution, Art X, Section 7, Civil Service:

Appointments/Promotions reads:

> Permanent appointments and promotions in the classified State and City Service shall be made only after certification by the appropriate department of Civil Service under a general system based upon merit, efficiency, fitness and length of service ascertained by examination, which **so far as practical, shall be competitive.** (Underlines mine.)

5) The Louisiana Supreme Court Ruling on December 13, 1976, in the case of John L. Hoppe v. City of Shreveport, LA, 340 So. 2nd, 1314 Louisiana Supreme Court, 1976, which states, in effect:

> When an entirely new position is created within the classified service, no permanent appointment can be made to it except in accordance with examination and certification procedures set forth by law. (Underlines mine).

6) President Reagan's Executive Order 12372 and the Federal Office of Personnel Management deregulation of State Merit Systems.

7) Louisiana R.S. 13.5801.1 (quoted on pages E 19) which requires Louisiana's Attorney General to defend any State employee/official sued under 42 USC 1983 unless they are wrongdoers.

Therefore, the major controversy before this Court is whether Louisiana State Civil Service's unique application of its Civil Service Rule 5.7 is, among other things, "permissible" as ruled by Federal District Judge or does it (as evidenced later):

. provide for clever, unique personal discrimination?

. circumvent constitutionally

required "if at all practical" competition/certification amongst all new and old incumbents of all new and old positions?

- deny the victims of their constitutional right to Due Process and Equal Protection?
- establish as per Bishop v. Wood, 96 S. Ct. 274, 280 (1976) "a claim that the public employer was motivated by desire to curtail or penalize the exercise of an employee's constitutionally protected rights"?
- establish substantive Constitutional challenges and therefore appealable issues to this Court and, above all,

contribute to problems of extreme importance to the public?

STATEMENT OF THE CASE

Petitioner, henceforth whistleblower, in 1984 retired from 27 years of classified Louisiana State Civil Service during which time: 1) he served as Director of Louisiana's Medicaid program, and 2) had often witnessed public wrongdoing involving Louisiana's State Civil Service. Accordingly, when he himself became a direct victim of that wrongdoing, he decided to blow the whistle towards reform--especially after Louisiana's well-respected, non-partisan Public Affairs Research Council (PAR), in early 1981 reported on its survey of "State Workers' Complaints." This on-target

study indicated: that Louisiana's State Civil Service System was ridden with "favoritism it was intended to prohibit"; that competent and incompetent employees were "treated the same"; that "advancement too often depends on political connections rather than merit and Civil Service scores as prescribed by law"; that "Both findings warrant further exploration by the State Civil Service Commission; and that "As for perceptions of political favoritism in promotions, if they are accurate, <u>such favoritism will wreck the Civil Service System and return the old spoils system to state government if it is not brought under control."</u> On December 1, 1981, PAR recommended Civil Service reform, changes in Louisiana's Constitution and more accountability

After State Civil Service, on February 15, 1982, Title Changed rather than competitively Reallocated, both his and a Ms. Sylvia Sterne's positions and, on a permanent basis, promoted-appointed her from a GS-24 to a fantastic GS-35 level classification, i.e., Planning Analyst VI, increased her monthly salary $600 rather than the usual $50, and reappointed her, this time officially, as Director of the Louisiana Public Health Agency's critical policy, Planning and Evaluation Section (PPES) despite the fact that she had less than three years State Civil Service and a non-medical/Public Health-related degree in English Literature, this whistleblower, on March 23, 1982, protested to the Louisiana State Civil

Service Commission, henceforth Commission, her promotion **"under the guise of a Title Change,"** and appealed for a more appropriate classification of his position which then served as both Chief Public Health Planner and Program Developer. When the Commission "misfiled" this protest-appeal for 15 months, the whistleblower's second appeal, on January 10, 1984, requested that it investigate serious wrongdoing within and between the State Civil Service Department and Louisiana's Public Health Agency.

After the Director of State Civil Service, Mr. Sumrall, wrote, in November 1984, that the Commission's investigation found no wrongdoing and that its report could not be made public despite a Civil Service Rule to do so

within six months, the whistleblower: first obtained, on February 1, 1985, a State Court approved Mandamus--which the Commission has defied to this day in October 1987. Secondly, the whistleblower, on February 5, 1985, and on April 2, 1986, before the Commission, investigated-prosecuted his own charges and so produced highly revealing and perjured testimony. On October 7, 1985, the Commission issued its 21-page, single-spaced OPINION, which denied the whistleblower's appeal (which then progressed through State litigation), but because of the evidence presented, necessarily acknowledged most of the alleged wrongdoing (none of which to this day in October 1987 has been corrected), especially State Civil Service Mr. Frank Reitzel's "violation

of Civil Service Rules" when he, on February 15, 1982, Title Changed the wrong position, namely that of Ms. Sterne, rather than position #1155-001. Note then the explicit quotation from the Commission's OPINION as follows:

> Based on the evidence presented, the Commission concludes that Ms. Sterne's position should not have been title changed. First, the position which was title changed was position #1714-003, which was the program evaluation position into which Ms. Sterne was initially hired....The duties of a journeyman program evaluator are drastically different from the duties of the Director of the Policy, Planning and Evaluation Section. For this reason, position #1714-003 should not have been title changed. Second, Ms. Sterne was not an incumbent of the job of Director of Policy, Planning and Evaluation as of December 31, 1981. She was assigned some of these duties on an acting basis, but had not been officially placed in that

position by promotion, appointment, detail or otherwise as of December 31, 1981. That Ms. Sterne was not an incumbent of this position is blatantly obvious from her December 31, 1981, job description, particularly Section 14 thereof, which essentially states that the position was vacant and OHSEQ (Louisiana's Public Health Agency) wanted to appoint Ms. Sterne to that vacant position. Because Ms. Sterne was not an incumbent of the position, she was not eligible to be title changed without meeting the minimum qualifications for the new class. Third, the position which DCS title changed (#1714-003) was not the position for the Director of Policy, Planning and Evaluation. The only position which had ever been used as a Director of that Section was position #1155-001. Therefore, the only position which could have been title changed to Planning Analyst VI was position #1155-001. For the foregoing reasons, the Commission concludes that Mr. Vanderwall has proved that DCS violated the Civil Service Rules concerning Ms. Sterne's title change. The Commission

> would order that disciplinary action be taken against the person who was responsible for this error (wrongdoing); however, Mr. Vanderwall did not put on any evidence to enable the Commission to determine who that person was....Frank Reitzel, the then Chief of the Classification and Pay Division of DCS... might be said to be ultimately responsible....However, Mr. Reitzel has retired from State Service and therefore is not subject to any disciplinary action.

NOTE: The whistleblower himself became a direct victim of unconstitutional discrimination first, when the above-cited "position #1155-001" and references to it were illegally whited-out from his job description to conceal and so duplicate that existing position and other agency units and functions in order to benefit Ms. Sterne, the favored employee; secondly, when an aggressively obtained

copy of an official State Civil Service document dated December 7, 1983, was found to have falsified those same facts; and thirdly, when unconstitutionally, as explained below, his position was title changed (rather than competitively Reallocated) so as to disregard his qualifications and to deny (since 1978 and to this day in October 1987) the opportunity for him or another qualified person to fill position #1155-001.

After the quasi-judicial Commission in its OPINION, dated October 7, 1985, denied the appeal, upheld the Title Change and condoned the criminal act itself of whiting out a public personnel document saying that it did not falsify but made the job description "more accurate," the whistleblower appealed to

Louisiana's Court of Appeals, First Circuit, which thereupon made a **"manifest error"** in its own OPINION as quoted verbatim below:

> William Vanderwall appeals an opinion of the State Civil Service Commission **upholding the conferring** on Ms. Sterne of the title of Planning Analyst VI....
>
> ....The State Civil Service Commission in its opinion noted that Mr. Vanderwall had simply failed to prove discrimination. After a full review of the record, we find no manifest error in this ruling or in the opinion of the State Civil Service Commission.

Subsequently, the Louisiana State Supreme Court, on September 4, 1987, "Denied" the whistleblower's Application for a Writ of Certiorari and, on September 25, 1987, "Denied" an Application for Rehearing which included the larger issue of the Louisiana State

Civil Service Department-Commission's own operation of a patronage-spoils system.

Of major public importance were two discoveries made after his investigation-prosecution, which caused the whistleblower to file in Federal District Court, on February 4, 1986, a lawsuit based on 42 USC 1983 versus State officials for serious public wrongdoing committed "under color of law" and based on the Fifth and Fourteenth versus the Federal defendant for failure to enforce Congressional intent and law "to strengthen" state and local Merit Personnel Systems so as to enforce the Five Merit Standards of which one is "to protect the rights of employees."

The first discovery came from Item

35, as already quoted verbatim above on page 13, of the Commission's OPINION, dated October 7, 1985, which clearly explained how the State Civil Service Department-Commission in Louisiana, and perhaps elsewhere in this Nation's governments, operates its own patronage-spoils system. Thus, this Machiavellian, clever, and unique discriminatory personnel practice **TREATS THE SAME RATHER THAN DIFFERENTLY** (as all Civil Service Rules state it) both the favored and the unfavored employee with a **TITLE CHANGE of BOTH THEIR POSITIONS SO AS NOT TO REQUIRE, AS PER CIVIL SERVICE RULE 5.7, STATE CIVIL SERVICE STAFF'S CONSIDERATION OF THE QUALIFICATIONS OF EITHER EMPLOYEE.** Thus, the favored but otherwise unqualified employee is enabled to

circumvent Louisiana's Constitutionally required competition/certification/ qualification processes and to be promoted/appointed by being "grandfathered" or "blanketed" or "Title Changed" into a higher classification/ pay/position of decision-making authority for which he/she could not otherwise qualify/compete. The danger herein is that the State Merit System in Louisiana (which was created by Louisiana's Constitution and, since 1978, has even authority over most of the Governor's administrative staff) could operate its own patronage-spoils system--unaccountable to no other authority other than its own "exclusive powers" which it has claimed often throughout this case.

The second discovery, which led to

Federal litigation, came from a clue derived from testimony elicited on February 5, 1985, with regard to "position #1155-001." Obtained sometime thereafter was a copy of another official State Civil Service document (see Appendix F), dated August 1, 1980, as well as April 7, 1981, which showed that both Mr. Frank Reitzel and one or more members of the Commission made very timely attempts to abolish, conceal (at least temporarily as explained later) and so duplicate the Public Health Agency's position #1155-001 to effect the fantastic increase in Ms. Sterne's classification, pay, and authority. In 1979, another position and its incumbent was similarly concealed in order to hire Ms. Sterne. In like manner, in 1978 and to this day in October 1987, position

#1155-001 has been abandoned so as to have provided both Mr. Kimbrell and Ms. Sterne with unofficial, temporary, but potentially everlasting "Acting" authority as Director of the above-cited Policy, Planning and Evaluation Section. Thus, on August 1, 1980, exactly four days after a Governor Treen-appointed State Health Officer traumatically ended Ms. Sterne's almost one-year reign of unofficial authority, Mr. Reitzel initiated the abolishment of position #1155-001 and allegedly began to create a new, fraudulent Planning Analyst job classification series as an opportunity to uncompetitively Title Change Ms. Sterne and her position, In a similar, very timely act "in early 1981," on April 7, 1981, the Commission itself, officially--but temporarily--

abolished position #1155-001 so that it could/would not appear in the State Pay Plan and be considered during both the development and implementation of State Civil Service's "newly created" Planning Analyst Series. Indeed, "abolished temporarily," because on that same day, February 15, 1982, that the fateful Title Changes were made, State Civil Service Mr. Reitzel still incredibly blundered when he Reallocated the officially abolished position #1155-001 downward from GS-35 to GS-29 at the same time he Title Changed Ms. Sterne's position from GS-24 to GS-35. Could it have been that Mr. Reitzel did not know of the Commission's deceptive act? This and many other questions remain unanswered and begged for a day in court.

Today, in October 1987, in defiance of or with the consent of the Commission, State Civil Service has yet to correct Mr. Reitzel's "violation of Civil Service Rules" since Ms. Sterne still has the lofty Planning Analyst VI classification, gets a fantastic $600 boost in monthly salary--retroactive to a period December 1, 1981 to March 15, 1982, during which time the Commission, as noted above, has admitted she did not perform in the capacity for which she was paid--i.e., FRAUD AND GRAND LARCENY? --and retains a high position of authority. Furthermore, the Public Health Agency's official position #1155-001 has yet to be opened to competition amongst qualified persons, as the Louisiana Constitution and the State's Public Health requires. Today,

it is now final that neither the Commission nor the State Courts can be relied upon for correction/relief/ reform; the same is true of Federal Courts as follows:

The Federal District Court, on May 23, 1986, acknowledged "to the conspiracy to violate the plaintiff's rights, the plaintiff's complaint is **timely** because he had no knowledge such a conspiracy existed until February 5, 1985," but went on: to dismiss the defendants, Smith and Kimbrell, to dismiss the charges of conspiracy, etc., and the whole case itself because of PRESCRIPTION based upon Louisiana's RULE OF CONSTRUCTIVE NOTICE OF TORT which it defined as:

> Whatever notice is enough to excite attention and put the owner on his guard and call

> for inquiry and is tantamount to knowledge or notice of everything to which inquiry would lead.

The fact is that the whistleblower did have knowledge of a conspiracy amongst governmental officials and thus called for inquiry, i.e., an investigation by the Commission, on January 10, 1984, not having then nor until sometime after the prosecution on February 5, 1985, "notice of everything to which inquiry would lead," namely the discovery that one or more members of the Commission itself participated in the conspiracy, etc. Everything then fell into place: why the Commission misfiled for 15 months the first appeal; why it was so defensive-offensive during the prosecution; and why it still defies a Mandamus and any correction of acknowledge "violation of Civil Service

Rules." Apparently, it is confident that no power on Earth can coerce them.

The Federal Court of Appeals, Fifth Circuit, upheld the District Court's decision(s). However, when State Civil Service's Chief Attorney, Mr. Robert Boland, moved to dismiss the defendants, Mr. Sumrall and Mr. Reitzel, the whistleblower appealed once more and pointed out: that the Commission itself accused Mr. Reitzel of "violating Civil Service Rules"; that there had been no pretrial hearing/review of other evidence of wrongdoing; and that the U.S. Magistrate who, presumably, would have conducted such a hearing but couldn't since he discovered that the case was at the Appeals Court and who then spent his time, before attorneys from the U.S. Attorney and the State

Attorney General's Offices responding to Civil Service's Attorney Boland's remark to the whistleblower that "YOU CAN ALWAYS USE A GUN" to get justice. IT IS ALSO IMPORTANT TO NOTE THAT MR. BOLAND DID NOT RESPOND EITHER TO THE WHISTLEBLOWER'S BRIEF, DATED OCTOBER 17, 1986, TO THE COURT OF APPEALS, FIFTH CIRCUIT, NOR TO A COMPLAINT LODGED IN STATE COURT IN SEPTEMBER 1986 DIRECTLY AGAINST HIM FOR ALLEGEDLY INVENTING/ CONDONING THE ALLEGED WRONGDOING. In the Brief, the whistleblower naively dropped the Prayer for Judgment for money damages--since the suit against Mr. Boland asked for that--and prayed for only the opportunity to present his evidence of governmental wrongdoing so as to support his REMAINING PRAYERS FOR DECLARATIVE AND INJUNCTIVE JUDGMENTS

TOWARDS THE REFORM OF LOUISIANA'S CIVIL SERVICE SYSTEM. Whereupon, the Court of Appeals, ON ITS OWN MOTION, dismissed the appeal for "LACK OF JURISDICTION" and explained:

> On appeal, Vanderwall expressly abandons his request for relief. By way of relief, he seeks only the opportunity (as per 42 USC 1981) to remain in the Federal District Court so as to 'give evidence' generally about various practices of the defendants. This change in Vanderwall's requested relief implicates the constitutional standing doctrine. Because the issue goes to jurisdiction, we raise it on our own motion.
>
> ...Vanderwall's newly requested relief...might ease his frustration. The Supreme Court has made it clear, however, that 'the psychological consequence presumably produced by observation of conduct with which one disagrees' is not a sufficient personal injury for constitutional standing,

to which the whistleblower responded in his Petition for Panel Rehearing on

July 22, 1987, with the case of United States ex rel Motley v. Rundle (1972, ED Pa) 340F Supp 807, 810-811; a Federal Court ruled:

> Whether or not actual compensatory damage is present, a plaintiff in an action under 42 USC 1983 may also recover nominal damages because the constitutional rights of a citizen are so valuable to him that an injury is presumed to flow from the deprivation itself. In most cases when a public official denies rights that the citizen felt secure under our Constitution, the result is hurt feelings, outrage, embarrassment or humiliation and nominal damages may be awarded for those natural consequences of lawless action by state officials.
>
> COMMENT: Apparently under 42 USC 1983, even "psychological consequence presumably provided by observation of conduct with which one disagrees" is "a sufficient personal injury for constitutional standing."

Nonetheless, the Court of Appeals,

Fifth Circuit, "Denied" on August 10, 1987, the Petition for Panel Rehearing and "Denied," on September 29, 1987, a second motion for stay of the Mandate.

The whistleblower, though not an attorney, concludes this Statement of the Case with the observation that neither the Federal District nor Appeals Courts nor the legion of lawyers that have been his adversaries have properly addressed the special legal benefits provided to persons who blow the whistle on public wrongdoing as per 42 USC 1983.

REASONS FOR GRANTING THE WRIT

I

DUE PROCESS MUST WORK (in reference to Issue No. 1 and Constitutional challenges Nos. 1, 2, and 5):

Constitutional Due Process has been adequately defined by:

- The U.S. Supreme Court as per the U.S. Supreme Court Bulletin, Volume 8, Number 6, page 7, of January 24, 1986, as follows: "The due Process Clause was intended to secure an individual from an abuse of power by governmental officials" (the essence of 42 USC 1983);

- Daniel Webster, operationally, as "law which hears before it condemns; which proceeds upon inquiry; and which renders judgment only after trial."

This whistleblower has twice been denied Constitutional Due Process; first, as a direct victim of public wrongdoing, namely by high-level governmental officials clothed by "color of law"; and secondly, by the legal system including lawyers and the courts, as follows:

In the first instance, denial of

Due Process was more than having been victimized by the public official's criminal lawbreaking, as cited above, but rather by denial of definite and specific constitutional rights, namely, protection against undue discrimination by the uniquely uncompetitive and unconstitutional Title Change personnel mechanism that is contrary to Louisiana's Constitution and a Louisiana Supreme Court decision which together says that "if at all practical," both new and old incumbents of old and new positions shall be subject, that is to say, "proceed with inquiry," to the conditions of merit/certification/competition/qualification, etc. It is fundamentally argued that there is no logical or logistical reason that the Title Change personnel mechanism like

its counterpart Reallocation (wherein there is a change of duties and responsibilities) cannot be subject to the PROCESSES of qualification/ certification/competition. This whistleblower was, because of public wrongdoing and the deliberate failure to "proceed upon inquiry," denied twice, in 1978 and in 1982, the process/ opportunity to qualify/compete for "position #1155-001."

In the second instance, both the State and Federal Courts, as well as the Federal Office of Personnel Management, have denied Constitutional Due Process in terms of its definition by Daniel Webster since none of them has, via the otherwise workable 42 USC 1981 and 1983, listened to, inquired into, or judged the merits of the whistleblower's body

of documentary and testimonial evidence of public-governmental wrongdoing. (Please see Petitioner's Petition for Panel Rehearing to the Federal Court of Appeals, Fifth Circuit, Appendix E, wherein the whistleblower successfully argued the special legal benefits of 42 USC 1983.)

II.

EQUAL PROTECTION MUST WORK in reference to Issue No. 2 and Constitutional challenge No. 6.

The 42 USC 1983s provision of an attorney in criminal but not Civil Service cases, even if constitutional rights are involved, seems, in itself, contrary to equal protection of the law when the hardly well-off public servant must either, with humiliation, apply as a pauper or go the way this

whistleblower went--which was hardly inexpensive or productive. This whistleblower has from the beginning stated his belief that, if armed with truth and specific, concrete facts/evidence, obtaining justice in a Civil Service case should not depend upon having a lawyer, because in most of those cases, the cost of an attorney far exceeds the reward of whatever, such as "pay, employment, or promotion," that may be granted--unless the reward is a matter of principle.

Louisiana's law R.S. 13:5108.I was invoked in this case to defend/protect the wrongdoers who are allegedly guilty of criminal behavior against the government, the public, Public Health, and this whistleblower. Indeed, the Louisiana Attorney's Office has defended

not only Mr. Kimbrell--whose lawyer (as provided by the Public Health Agency) obeyed R.S. 13:5108 by forwarding the complaint to the Attorney General within five days, but also Commission Chairman Smith, State Civil Service Director Sumrall, and Reitzel--who were initially defended by State Civil Service's Chief Attorney, Mr. Robert Boland, who did not obey R.S. 13:5108.I. However, after Mr. Boland failed to respond to the whistle-blower's Brief to the Federal Court of Appeals, Fifth Circuit, and to a complaint lodged against him in a Louisiana District Court (for inventing/condoning the wrongdoing), the Louisiana Attorney General's Office has defended Mr. Boland, even though he once again failed to obey R.S. 13:5108. Even so, for the Louisiana Attorney General's

Office to defend an accused public employee/official, the question arises as to what point in time does he "proceed to inquire"/investigate to determine whether or not his client was a wrongdoer--or is that decided after the whistleblower wins or loses his case?

The Civil Servant-whistleblower requires legal assistance just to avoid such obstructions of justice as twisting the facts/truth, by delaying, by unnecessarily duplicating several times, the documentary evidence to bloat the record, by dragging out the whistle-blower's prosecution to a day and one-half so as to bloat the transcription, by issuing a 21-page, single-spaced opinion dated October 7, 1985, that will be extremely difficult to reduce to a four-by-seven-inch format, so on, and so on.

III

CIVIL SERVICE MUST BE CONTROLLED IN ORDER TO WORK (in reference to Constitutional No. 3).

The State Civil Service Merit System in Louisiana, if not elsewhere in this Nation, has become AN UNCONTROLLED GOVERNMENT WITHIN A GOVERNMENT empowered by the State's Constitution with, as it claims often in this case, "exclusive powers" that are without the separation and thus the checks and balances amongst rule-making, administering, judging (indeed, like a Kafka court which it needed, as later found out, to protect itself) and investigating to the extent that they can confidently operate, in the manner of tyranny, i.e., above its own rules and those of others as demonstrated by its defiance, in

contempt of court, of a Mandamus, of any correction of its own acknowledged "violation of Civil Service Rules," and, in short, of every aspect of the State's Oath of Office as cited above. It is this self-contained arbitrary, unaccountable, and uncontrolled governmental power that believes it can get away with undue discrimination, denial of rights, and, indeed, as cited above, criminal behavior that makes this case one of extreme public importance--because Civil Service is supposed to qualify and protect those employees who actually operate our government(s).

This whistleblower, who has been uncomfortably between those who wish to legislate Civil Service out of existence and those who worship it as above error, wrongdoing, and as a sacred cow which

can do as it pleases, argues that our Merit Systems, as the backbone, in terms of personnel and standards, of modern government must work and work well. To work, it must, like any governmental authority, be subject to "judicial review," somehow to separation of powers, and to reasonable regulation. In short, Civil Service must be controlled and because it is government within government and subject to our Constitution, it is within the proper concern and jurisdiction of the U.S. Supreme Court, the guardian of our Constitution, and, in this case, the last legal resort to make effective already existing workable controls such as the Constitution, 42 USC 1981, 1983, and 1985, as well as 42 USC 4701 and 4721, the Office of Personnel

Management, Civil Service, standards, and whistleblowing as discussed below.

While the U.S. Congressional "Inter-governmental Act of 19 " sought Federal deregulation of State Merit Personnel Systems, it is argued that surely it did not intend to go President Reagan's Executive Order and the Federal Office of Personnel Management's route of complete "self-certification" which is tantamount to no regulation at all or to negate 42 USC 4701 and 4721 with which "to strengthen" the State's Civil Service System's adherence to Five Merit Standards, the fifth one being "to protect the employee's rights." What says it all about this dangerous failure to regulate/control/protect is this whistleblower's nightmarish experience plus the fact that the Federal Office of

Personnel Management (the former Federal Civil Service Commission) has abolished and reduced the functions of its former Bureau of State Merit Systems to one person, Mr. Ashton Morris, who receives but obviously cannot act upon complaints.

STANDARDS MUST WORK. On a higher level of concern, this lawsuit challenges the entire practice of "grandfathering in," "blanketing in," "title changing in," and "Acting" appointments without consideration of at least minimum merit(s) as means to circumvent the processes of qualification/certification/competition, in short, standards of performance in a particular field, thus putting undue risk upon consumers, whether governments or persons. Especially in this era of

high technology, the consumer should be assured that at least governmental providers/workers meet, have acquired, or retain certain standards of capability and know whether a certain title/position was earned, retained, or merely bestowed. To minimize risk to all concerned, it behooves the professional or otherwise skilled/ certified provider, through continuing education, retraining, and the like, to meet continuously one minimum standard for all in a particular field of practice; otherwise, it is a question of equity as well as "let the buyer beware" in areas where standards should reduce that danger.

CIVIL SERVANT-WHISTLEBLOWER'S RIGHTS

The basis of the whistleblower's appeal to the Commission was Civil

Service Rule 13.10(c) which reads:

> Any person in the classified service who alleges that he has been deprived on any rights, discriminated against, or adversely affected by the violation of any provision of the Article or of Rule of this Commission.

Amongst his other rights does, in particular, the Civil Servant have the right, beyond free speech: first, to be a whistleblower since he can observe and possibly prevent firsthand governmental wrongdoing; secondly, whether for good or ill, to be, if not believed, at least heard, with Due Process so as to "proceed with inquiry"; and thirdly, to be protected by the Constitution, 42 USC 1981, 1983, 1985 (if conspiracy is involved), Civil Service, the Federal Office of Personnel Management, the District and State Attorney General, and the Court?

Accordingly, does the Civil Servant have the right (perhaps at the same time he takes the Oath of Office) to be "read his Constitutional Rights," which must be done, no less, with criminals? Is it not incumbent upon Civil Service and the Federal Office of Personnel Management to spell out these rights, to have them read, and subsequently to protect the Civil Servant's exercise (even as an accuser of wrongdoing) of those rights, if necessary in court; indeed, perhaps provide legal assistance to counter, say Louisiana's R.S. 13:5801.1 (if it is determined to be constitutional in terms of equal protection) which requires protection of the accused Civil Servant unless shown to be a wrongdoer?

With regard to the U.S. Supreme Court's ruling in the case of Bishop

v. Wood, 96 S.Ct. 274, 280 (1976), does it not have to go beyond the "harsh" "errors" and "mistakes" to the harsher abuses of public trust and power so as not to conflict with orotected rights under 42 USC 1981, namely, "to present evidence" of governmental wrongdoing as per 42 USC 1983? If the Civil Servant has the right (indeed, the moral responsibility) to be a whistleblower and to expect Due Process and protection, then he could directly, as per Bishop v. Wood, "claim that the public employer was motivated by desire to curtail or to penalize the exercise of an employee's Constitutionally protected rights" if the public employer ever attempted to stop whistleblowing. In anticipation of the argument that such whistleblowing rights would turn

our Civil Service System into a body of stool pigeons, it needs to be reiterated that any governmental behavior should also be questionable, questioned, and answerable.

IV

WHITING OUT PUBLIC JOB DESCRIPTIONS BY PUBLIC OFFICIALS SHOULD NOT WORK (in reference to Issues Nos. 1 and 2 and Constitutional Challenge No. 4).

What makes the whiting out of the whistleblower's job description (an official public personnel document) contrary to Due Process is that the act was done by public officials under "color of law" with fraudulent conspiratorial intent, all of which comes under the purview of 42 USC 1983 and 1985. Otherwise, the act itself could/would simply be considered a

violation of Louisiana Criminal Code 131 prohibiting "injury to public records." If the U.S. Supreme Court chooses silence or affirms that this act, amongst others, is "permissible," then every governmental job description becomes prey to managerial manipulation under the arbitrary guise of making the document "more accurate." Tyranny, which is without rules or the violation of rules including their own, would abound with totalitarian reasoning that "the end justifies the means," as long as it is their ends. Suffice it to say that in its official report dated December 7, 1983, State Civil Service itself questioned Mr. Kimbrell as to why, instead of whiting out, didn't he utilize Item 15 on the back of the job description which is to be used by

supervisors to make their modifications. Despite this fact, the whistleblower's job description is yet to be corrected and fully restored as a matter of Due Process, honesty, and fairness. The official report of December 7, 1983, the whiting outs and the Title Changing of the whistleblower's job description were altogether fraudulent, criminal activities, and unconstitutional.

CONCLUSION

For these reasons, this Petition for Certiorari should be granted because they reflect the real, as in Louisiana, a potential state of tyranny that could affect the quality and the protection of all those classified civil servants who actually operate the government(s) in this Nation--thus making this case particularly within the proper concern

and jurisdiction of the U.S. Supreme Court. However, one reason, namely the constitutionality of Louisiana's unique discriminatory practice of treating both the favored and the unfavored the SAME rather than DIFFERENTLY, should be decided on the face of it. All other reasons should cause the case(s) (especially because of the tremendous volume of documentary evidence that is contained in each Court record) to be remanded back to the Federal District Court and/or to the Louisiana State Civil Service Commission for the purpose of requiring it/them to make adequate findings of fact and conclusions of law, this time based upon the letter and spirit of 42 USC 1983 and 1981 towards declarative/injunctive judgments to resolve the lesser substantive

Constitutional challenges and thereby the issues. The Court's denial or silence itself would decisively condone/ encourage continuation of serious governmental wrongdoing that now has the immunity of a sacred cow but which will likely re-emerge in a class action lawsuit conducted by skilled lawyers. Eventually. Why not now?

Respectfully submitted,

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